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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/497,328	02/03/2000	Sepehr Mehrabanzad	CX098043	7358
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23125	7590	04/02/2004
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MOTOROLA INC
AUSTIN INTELLECTUAL PROPERTY
LAW SECTION
7700 WEST PARMER LANE MD: TX32/PL02
AUSTIN, TX 78729

EXAMINER

CORRIELUS, JEAN B

ART UNIT	PAPER NUMBER
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2631

DATE MAILED: 04/02/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/497,328

Applicant(s)

MEHRABANZAD ET AL.

Examiner

Jean B Corrielus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Li et al US Patent No. 5,864,560 in view of O'Connor et al US patent no. 4,780,883.

Li et al discloses a method and apparatus having the step of transmitting information used to configure a transmitter in the data mode without entry back to into the startup mode whereby signaling is used to reconfigure a modem transmitter without having to switch to the startup mode see col. 11, lines 10-13, lines 23-25, lines 48-54 and lines 60-64, col. 12, lines 45-49, thus eliminating inherently switchover time and taking advantage of higher data rate associated with the data mode. As noted in the applicant's argument, filed on 8/4/03, page 2, Li et al teaches out-of-band signaling rather than in-band signaling to send the control information. However, the used of in-band-signaling to send control information is old and well established in the art. For instance O'Connor et al at col. 2, lines 20-23, teaches the used of in-band-signaling to send control information. Given that it would have been obvious to one skill in the art to incorporate such a teaching in Li et al in order to avoid the need to use a secondary channel for signaling as taught by O'Connor see col. 2, line 23.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li et al in view of O'Connor et al US patent no. 4,780,883 and further in view of applicant's background of the invention page 4, lines 15-19.

As applied to claim 10 above, Li et al and O'Connor et al disclose every feature of the claimed invention but do not explicitly teach the further limitation recited in claim 11. However, such limitation is old and well known in the art as acknowledge by applicant see page 4, lines 15-19. It would have been obvious to one skilled in the art to incorporate such a teaching in Li et al and O'Connor et al so as to take advantage of higher data rate provided in the data mode.

Allowable Subject Matter

4. Claims 1-8 are allowed.

Response to Arguments

5. Applicant's arguments filed 2/8/04 have been fully considered but they are not persuasive. It is alleged that neither Li nor O'Connor taught any way to select a bit sequence that was highly unlikely to be produced by actual data. However, it is noted that such limitation is not part of the claimed invention. Accordingly, such point of argument is moot. Applicant's argument further suggests that Li et al and O'Connor are not combinable because of chance for misdetections and or modem malfunction. Examiner disagrees. As stated in the last office action,

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a motivation to combine Li and O'Connor is to avoid the need to use a secondary channel to transmit control information to change modem parameters. Even if applicant were right about possible of misdetection and/or modem malfunction, it would not certainly be because inband signaling is used over out of band signaling. The system of Li et al is expecting and should work the same way before the substitution of inland signaling for out of band signaling.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. **Any response to this final action should be mailed to:**

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

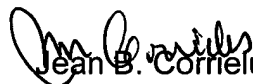
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(703) 305-872-9314, (for formal communications; please mark "EXPEDITED PROCEDURE") and (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean B. Corrielus whose telephone number is (703) 305-4023. The examiner can normally be reached on Monday-Thursday from 7:00 A.M. to 5:30 P.M.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3800.


Jean B. Corrielus

Primary Examiner

TC-2600

4/1/04